

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF

NUMBER

ANDREA LODRIG GIBSON

03-14588

DEBTOR

SECTION A

CHAPTER 13

REASONS FOR ORDER

This matter came before the court on the objection by the debtor and the Chapter 13 Trustee to the claim of Wilshire Credit Corp. (“Wilshire”). A hearing was held on July 1, 2004, at which time the court heard the statements of counsel. The court gave the parties until July 15, 2004, to file simultaneous briefs. Upon consideration of the statements made, the memoranda submitted, the record in the case, and the applicable law, the court will overrule the objections for the reasons hereinafter stated.

I. Facts

Wilshire filed a proof of claim in the amount of \$61,340.28.¹ The attachments to the proof of claim include a breakdown of the amount of the claim and the promissory note and mortgage on which the claim is based.

¹ Proof of claim #4.

The debtor objects to the claim because the proof of claim lists the “amount of arrearages and other charges included in the secured claim” as \$61,340.28, while at the same time the proof of claim lists the total “secured claim” as \$61,340.28.² The debtor contends that there should be no post-petition interest on a claim that is totally in arrearages, and therefore, the amount of the claim should be reduced by the \$13,718.97 interest.

The debtor also objects to the \$12,495.43 portion of the claim that is explained in the attachment as “other charges.”³ The debtor contends that the claim “fails to describe the nature of those ‘other charges.’” As such, the debtor contends that the \$12,495.43 should also be deducted from the amount allowed.

The Chapter 13 Trustee filed an objection to claim on the grounds that the debtor’s motion must be heard before the court.

At the hearing held on July 1, 2004, the debtor raised the question of whether the note called for a balloon payment. Also, the parties refused to stipulate to any amounts. The court gave the parties until July 15, 2004, to file simultaneous briefs and took the matter under advisement.

On July 16, 2004, Wilshire filed a Motion for a Hearing on the Debtor’s Objection to Claim. Wilshire would like a hearing so that its

² Pl. 22.

³ Pl. 22 and proof of claim #4.

witness, who was present at the July 1, 2004, hearing but did not testify, can testify. Also, Wilshire would like to present an expert witness regarding the nature of the loan.

II. Law and analysis

A proof of claim “shall constitute prima facie evidence of the validity and amount of the claim.” Bankruptcy Rule 3001(f). If there is an objection,

The objecting party must then produce evidence rebutting the claimant or else the claimant will prevail. If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to “prove the validity of the claim by a preponderance of the evidence.” (citations omitted)

Matter of Fidelity Holding Co., Ltd., 837 F.2d 696, 698 (5th Cir. 1988).

The objecting party, the debtor, has not put on any evidence to rebut Wilshire’s proof of claim. First, the debtor contends that the claim should be reduced by the amount of post-petition interest. The debtor has neither cited authority, nor has the debtor produced any evidence to support this position.

Section 1322(e) of the Bankruptcy Code provides, Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the

amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

The promissory note at issue states under the heading “INTEREST,” “I will pay this interest rate both before and after any default described in this Promissory Note.”⁴ This language is sufficient to require additional interest on arrearages.⁵

The debtor also contends that the \$12,495.43 of “other charges” was not sufficiently described. This argument is unsubstantiated. The court finds that Exhibit A to Wilshire’s proof of claim sufficiently describes the charges.

Wilshire filed a motion on July 16, 2004, asking the court for a hearing in order to present witnesses in support of its proof of claim. Because the objecting party, the debtor, has not presented any evidence to rebut Wilshire’s prima facie case, nothing further is required from Wilshire. Accordingly, the court will deny Wilshire’s motion for hearing.

At the hearing on July 1, 2004, the court took the matter under advisement to determine whether the note called for a balloon payment or was amortized by equal monthly payments. It is clear from the parties’

⁴ Pl. 48.

⁵ See In re Young, 310 B.R. 127 (Bankr.E.D.Wis. 2003) .

supplemental briefs that neither party thinks that the note provides for a balloon payment. The court agrees.

Wilshire's contends in its supplemental memo, and the court agrees, that the amount of principal still due is a result of the debtor's default.⁶ The promissory note provides under the heading "PAYMENTS," "My monthly payment will be applied to interest before principal."⁷ When the debtor's payments were overdue, interest continued to accrue. There is a portion of principal still due because the payments made by the debtor were applied to interest first. The debtor's supplemental brief states, "Had the debtor paid each and every monthly payment as scheduled, then the full total payments due under the note would have been satisfied."⁸ This is correct, but because the debtor did not always pay timely, a portion of principal will still be due on the note's maturity date.

⁶ Pl. 47.

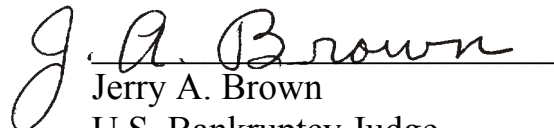
⁷ Pl. 48.

⁸ Pl. 50.

III. Conclusion

Because the debtor has not met her burden of rebutting the validity and the amount of the claim, the court will overrule the debtor's objection to claim and will allow the proof of claim as filed. An appropriate order will be entered.

New Orleans, Louisiana, July 23, 2004.


Jerry A. Brown
U.S. Bankruptcy Judge